

MASS. G67.8: Sp 31/R29



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REPORT OF THE GOVERNOR'S
TASK FORCE ON SPECIAL EDUCATION

SUBMITTED TO
THE LOCAL GOVERNMENT ADVISORY COUNCIL
NOVEMBER 1989

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At the Governor's request a special education task force was convened in May 1989 by Robert Schwartz, Governor's Education Advisor and Amy Anthony, Secretary of the Executive Office of Communities and Development. The task force was asked to address the fiscal impact of the "maximum feasible benefits" provision in the state special education law. Cities and towns, pressed to devote more resources to special education at a time of fiscal constraint, must reallocate funds for special education from existing education programs and services.

The task force conducted an extensive review of special education laws and regulations, financing arrangements, placement procedures, program standards and demographic data. It was clear from this review that increased expenditures in special education are the result of a number of complex and interlocking factors.

Special education is an entitlement program under state and federal law. Federal law establishes the right of all handicapped children to a free, appropriate public education and specifies detailed procedures for evaluation, individual education plans and elaborate due process procedures. Local school district teams make program decisions based on the needs of individual students. The Department of Education monitors local procedures for compliance with federal and state law. Because the system is an entitlement program, cost cannot be considered in individual placement and program decisions. However, there are opportunities to introduce cost controls into the system.

In its review the task force identified several factors which contribute to increasing costs. These factors include: increasing numbers of children living in poverty who arrive at school with special needs; federal mandates; state reimbursement and administrative practices; state regulatory and statutory provisions which exceed federal requirements; and the lack of community programs for severely handicapped children.

Several of these factors are not amenable to change. Federal requirements which have been established as a result of decades of court challenges cannot be altered. Societal changes which have produced new generations of children who live in poverty present new challenges for the education system of the next decade, and will require more than an educational response.

However, the task force identified four areas of potential cost savings for further review and discussion.

1. The "maximum feasible benefits " provision and other areas of state law and regulations.

2. Inadequate pre-referral systems.



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3. Private day and residential placements and procedures.

4. Human service agency participation in special education programs.

Maximum Feasible Benefit

The language of the state special education law (Chapter 766) states that children with special needs should be provided educational services to "minimize the possibility of stigmatization and to assure (their) maximum possible development". The law also states that if a special education program fails to "benefit the child to the maximum extent feasible" the child is to be assigned to a different program. The Chapter 766 regulations charge the state with the following obligation:

Section 500: Each school committee shall assure the maximum possible development of children with special needs provided that such children, to the maximum extent appropriate, are educated with children without special needs

A review of the David D. court case (1985) which dealt with this provision showed that the court had determined that Massachusetts law mandates a higher level of substantive benefits for special needs students than does the Federal law alone (P.L. 94-142). However, no objective maximum standards have been defined by any court or other source. Decisions by Massachusetts hearing officers and various court cases state that the "maximum" standard must be balanced by the requirement that students be educated in the least restrictive environment (with non-handicapped peers).

Local officials, concerned with rising education costs and shrinking budgets, have pointed to the "maximum feasible benefits" language as a cause of increasing special education costs. They are particularly concerned that the provision encourages enrollment in private education day and residential schools. Others feel that the provision is unfair for non-handicapped students who must suffer the consequences of budget cuts in the regular education program. Advocates for handicapped children feel that the provision is an essential guarantee for children who were formerly excluded from school or educated inadequately.

Despite the fact that the percentage of students in private day schools has declined over the past ten years, the perception is that enrollments are increasing. In fact, only 3 percent of all special education students in Massachusetts are enrolled in private day schools.

During the decade from 1977 to 1987, private residential school enrollment declined. In 1982 only .51 percent of all special education students (452) were enrolled in private residential schools. However, recently there has been a dramatic increase in residential enrollments. (See discussion on private placements). In 1990 there are 942 students enrolled in private residential schools.

The Department of Education has not collected data which would substantiate the claim that the "maximum feasible benefits" provision is causing these increased private placements. It is likely that the provision is having some effect in combination with several other factors which are more influential. The number of severely handicapped children is increasing; the state 60/40 reimbursement system may encourage private placements; the cost of transportation to day and collaborative programs makes residential placement more desirable; fiscal constraints are causing human service agencies to shift case loads to the public education system; and the federal requirement that schools pay attorney fees has decreased the number of placement appeals.

Despite the fact that no objective data is available linking the "maximum" standards to increasing costs and increasing private placements, the language creates the perception that a maximum standard precludes placement in the least restrictive environment. The task force recommends:

That Chapter 71B (Chapter 766) be amended in accordance with Sections 1 and 2 of House Bill 4856 to insert the term "in the least restrictive environment" after the terms "maximum possible development" and "maximum extent feasible".

This amendment will make it clear that children with special needs must be educated with non-handicapped peers wherever possible. The task force examined other areas of the law and regulations which are cost inflationary and has made recommendations for amendments in other sections of this report.

Pre-Referral Systems

The proportion of Massachusetts students enrolled in special education has continued to increase although total school enrollment has declined. The state ranks first in the country in the percentage of public school children in special education programs. This percentage has increased from 11.8 percent in 1978-79 to 16.8 percent in 1988-89. During this period total school enrollments have decreased from 1,095,452 to 833,970.

There are several reasons for the increased enrollment in Massachusetts. Massachusetts was the first state in the nation to pass major special education legislation. The state has active parent and advocacy groups which encourage the best possible programming for children. Since the passage of Chapter 766 many schools have not developed support systems outside of the special education system for children with simple remedial needs. The Chapter 766 regulations require this type of support and program modification:

Section 314: Prior to referral of a child for an evaluation, all efforts shall be made to meet such child's needs within the context of the services which are part of the regular education program. In addition all efforts shall be made to modify the regular education program to meet such needs. Such efforts and their results shall be documented and placed in the child's record. Nothing contained in this paragraph shall be construed to limit or condition the right to refer a child for an evaluation.

The lack of the development of such pre-referral systems in the wake of decreasing fiscal support for public schools has increased the number of children referred to the special education system and has led to the ranking of Massachusetts as first in the country in the percentage of children enrolled in special education programs.

These growing enrollments have increased costs. From 1977 to 1987 special education costs increased 120 percent while regular education costs increased 43 percent. With recent increases in the number of children suffering the effects of drug and alcohol abuse and neglect, and with declining support for human service and education programs, enrollment in special education programs is likely to continue to increase.

Section 314 of the Chapter 766 regulations needs to be enhanced to encourage schools to modify regular education programs before referring children to special education. And Section 315 which urges a principal to refer children to special education if they have been suspended, are truant or are not likely to be promoted, should be amended to reflect the fact that modifications to the regular program should be considered as well as referral to special education.

These two changes in the regulations should serve to remind school personnel that modifications to the regular program may be an appropriate first response to an educational problem and may prevent children from being inappropriately referred. At the same time, the amended regulations do not prevent the appropriate referral of a child to special education.

The task force recommends that Section 314 of the Chapter 766 regulations be amended as follows:

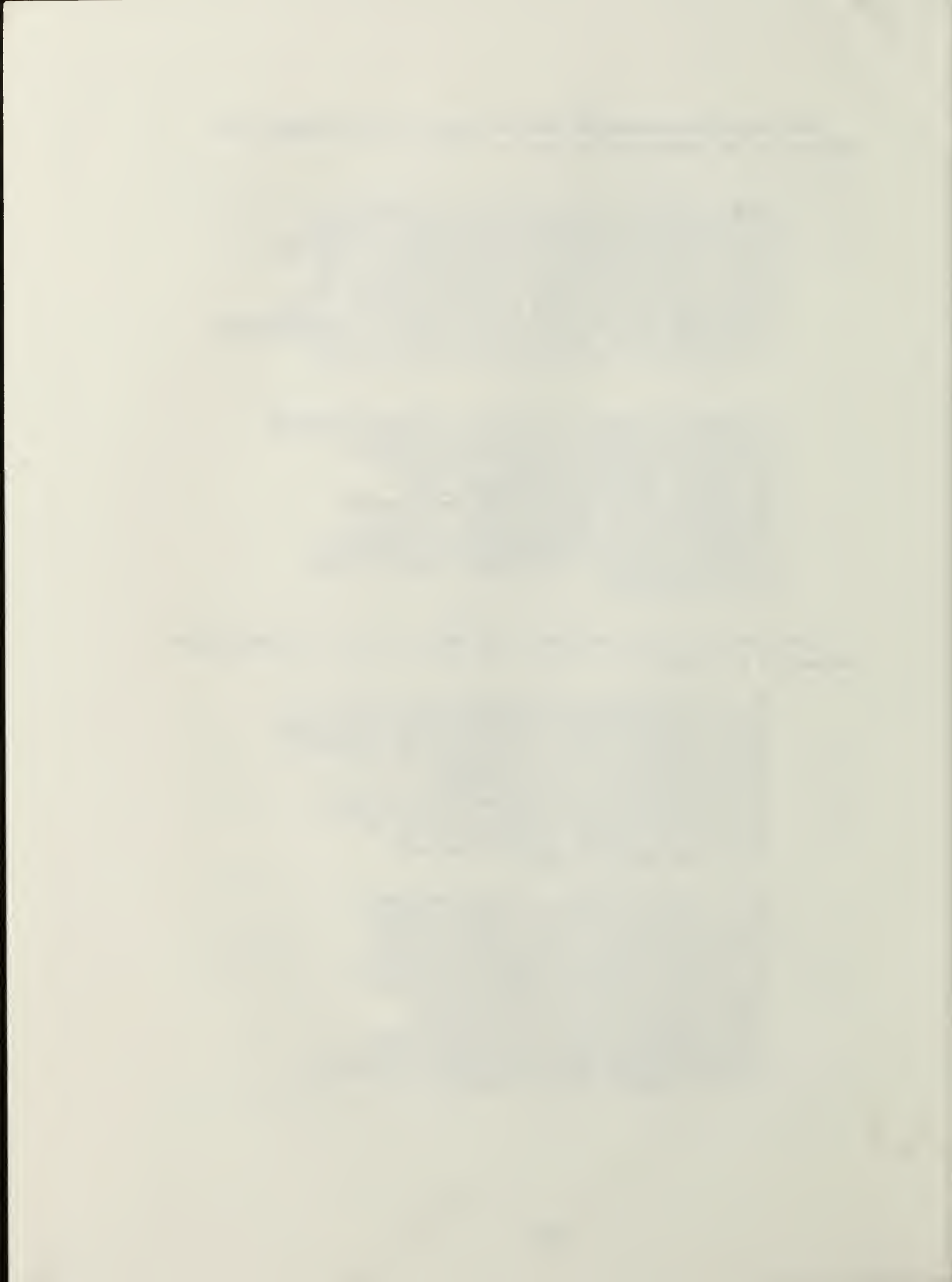
Prior to referral of a child for an evaluation the principal of the child's school shall ensure that all efforts have been made to meet such child's needs within the regular education program. In addition all efforts shall be made to modify the regular education program to meet such needs. Such efforts may include, but are not limited to, modification of the curriculum, teaching strategies, teaching

environment, or materials and use of support services therapy, consultative services and building based teams to meet the child's needs in the regular education classroom. Such efforts and their results shall be documented and placed in the child's record. Nothing contained in this paragraph shall be construed to limit or condition the right to refer a child for an evaluation.

The task force also recommends that Section 315 of the regulations be amended as follows:

No later than five days after the occurrence of any of the conditions described in Par. 315.1 each school committee shall insure that the following categories of children are referred to the person described in each paragraph for a determination of whether a child should receive pre-referral services pursuant to Par. 314, or whether a referral for an evaluation should be made.

315.1 The principal or his/her designee, of the school attended by such child shall determine whether a child should receive pre-referral services pursuant to Par. 314 or whether a referral should be made under Chapter 766, if any of the following conditions exist and shall promptly and in writing, notify the parents which condition exists, the determination made, and of their right to make a referral.



In addition the task force recommends that:

The Department of Education increase its efforts to provide technical assistance to local school districts to improve the development of pre-referral systems.

Private Day and Residential Schools

Only 3.6 percent of special education students are enrolled in private day and residential schools in Massachusetts. Despite this fact such placements are of primary concern to public officials because of their unpredictability and large cost. The average tuition rate at residential schools in Massachusetts is approximately \$66,022 and individual tuition rates can be over \$100,000.

In 1982, 640 students were enrolled in private residential schools in Massachusetts. The total tuition expenditure for those students was \$12 million. In 1990 the enrollment will have reached 998 students with tuition expenditures of over \$50 million. The state share of that tuition expenditure will be over \$30 million.

There are several reasons for increased tuition costs. The severity of student handicaps is increasing, requiring more supportive services. Private teacher salaries have had to rise to keep pace with the recent increase in public school salaries. Residential schools must provide 24 hour per day educational services. And recently it appears that the state budget crisis has caused other state agencies to shift some of their case loads onto the public education system.

During the past two years several procedural changes have been initiated by the Department of Education and the Rate Setting Commission to improve the operation of the system. These changes have been introduced in response to the concerns of local officials. They include:

1. The introduction of a cost analysis into the program auditing process.
2. The elimination of retroactive rates.
3. Closer monitoring by the Department of Education of private school enrollment and accounts.
4. The establishment of an external review panel to oversee private school requests for extraordinary relief.
5. The establishment of joint cost models for dealing with extraordinary relief requests.
6. And this year because of the current fiscal situation, a freeze has been placed on discretionary program changes.



The task force makes the following recommendations regarding private school programs:

The Department of Education shall provide a report to the Secretary of Administration and Finance by December 30, 1989 regarding the recent increase in enrollments at private special education residential schools.

And that:

The Department of Education, subject to the receipt of Federal funds, shall provide assistance to local communities in the provision of community based programs for severely handicapped children.

The Department is placing a high priority on systems change proposals which would involve communities and human service agencies in the development of community programs for handicapped children who are institutionalized at great expense. But the Department cannot institute such change alone. Other state agencies and local municipal and school officials must become involved in the planning and development of such programs.

Human Service Agency Participation in Special Education

The delivery of special education related services has been an issue since the inception of Chapter 766. The federal special education law, P.L. 94-142 provided state education agencies with the responsibility, but not authority, for overseeing delivery of related services by state human services agencies. Over the years, Massachusetts human services agencies have provided millions of dollars in related services to children with special needs in local district programs and through sharing private school costs. Services to students in local school districts have been particularly valuable because district personnel lack both funds and supervisory ability to provide medical and other human services.

The capacity of human service agencies to provide related services at the local district level and to share costs of private school placements has been drastically reduced by recent state revenue shortfalls. Based on preliminary analysis by the Department of Education, it appears that the decreased financial capacity of human services agencies to share residential school costs has led to an increase in placements funded through the 60/40 provisions for state/local cost sharing.

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The debate over who pays for supportive services may be exacerbated by the language in Section 5 of Chapter 766 that prohibits a school district from using school personnel to deliver certain related services and to claim personnel costs for these services under third party reimbursements. Statutory language does not allow school department employees to claim third party reimbursements. Under federal law, parents must consent in order for their private insurance to be utilized to pay for such services.

The Executive Office of Human Services (EOHS) and the Department of Education have sought to increase interagency collaboration for a number of years. The EOHS/DOE Interagency Agreement on Coordination of Services to Children has been in effect since 1987. Initial field tests indicated that coordinated area plans constitute an effective mechanism for coordinating education and human services in a cost-effective manner. Several additional areas have developed plans despite the lack of funds allocated for this effort. Interagency advisory committees are trying to coordinate their efforts with those of other local youth services initiatives. These local plans for coordination of education and human services deserve our support. But these efforts have been slowed by the recent state fiscal problems. However, to clarify the responsibility of human service agencies regarding special education and to allow schools to access third party payments the task force recommends:

That Chapter 71B (Chapter 766) be amended in accordance with Section 3 of House Bill 4856 which clarifies the responsibility of state human service agencies in the provision of supportive services and allows school personnel to access third party payments.

School personnel who provide supportive services such as speech therapy, counseling, and occupational therapy will be able to access private insurance payments, with parents' consent. This will take some pressure fiscal from state and local government.

Summary of Recommendations

The task force has addressed four area which are contributing to increasing costs in the special education system. The group has recommended changes which will control costs without limiting the rights of handicapped children. The suggested amendments to Chapter 71B (766) are currently included in House Bill 4856 which is before the legislature. The amended regulations will be considered during the Chapter 766 regulatory review process in 1990. We would like to encourage the Department of Education to move promptly in initiating the regulatory review process.

It is clear that the delivery of services to special needs children is a complex function. That function is primarily controlled by the fact that services are to be provided to special needs children on the basis of need without regard to cost. There are, however, areas in the system which are subject to cost control. The four areas identified by the task force and recommendations for change are summarized here:

1. Maximum feasible benefits provision:

We recommend that chapter 766 be amended to qualify the "maximum" standards with language which emphasizes that children must be educated, wherever possible, with non-handicapped peers.

2. Pre-referral systems:

We recommend that the Chapter 766 regulations be amended in sections 314 and 315 to strengthen the pre-referral section of the regulations and provide options other than special education referral for children who are having difficulty in school.

We recommend that the Department of Education proceed with a planned program to assist local school districts in improving their pre-referral systems.

3. Private special education schools:

We recommend that the Department of Education report to the Secretary of Administration and Finance by December 30, 1990 regarding the recent increase in private residential school enrollment.

We recommend that the the Department of Education proceed with planned systems change proposals for the development of community based programs, subject to the receipt of Federal funds.

4. Human service agency participation:

We recommend that Chapter 766 be amended in accordance with House Bill 4856 to clarify the role of state human service agencies in the provision of supportive services and to allow school personnel to access third party payments.

The Department of Education and the Rate Setting Commission have initiated a number of changes during the past two years to improve the special education system and control costs. These recommendations, if adopted, will improve the system and help to control costs. But cost controls are not likely to solve the problem of competing resources, if state and local officials do not place a high priority on the funding of all education programs in Massachusetts.

ADDENDUM

Trends in Special Needs of Children

During discussions on cost control measures the task force was confronted with sobering information on the characteristics of children now entering our public school system. That information is presented here as supportive data for our contention that more children are in need of special services and as a reminder that despite our best efforts to control costs, the needs of these children are so great that special education and human service costs are likely to increase.

An increasing proportion of Massachusetts children have special needs as a result of several factors, including increases in survival rates of premature infants, prevalence of substance abuse, child abuse and neglect, and AIDS. Other contributing factors include poverty, inadequate housing and homelessness, adolescent pregnancy, inadequate health care and nutrition, family fragmentation and violence and cultural and linguistic barriers.

Growing numbers of high risk infants are being born and surviving infancy. Factors contributing to high risk infancy include prematurity, low birth weight and increasing prevalence of drug abuse among childbearing women. Advances in medical science and technology enable more high risk infants to survive. Many of these children will need special education.

The number of children who are infected with the human immunodeficiency virus (HIV) continues to grow although many of these children have not yet developed full blown AIDS. A large proportion of these children acquire the infection from their infected mothers. An estimated 90 HIV-infected children were born in Massachusetts in 1988 and the number of infected children is projected to increase for some years to come. The life expectancy of an infected infant is unknown. Children who show symptoms before age two are likely to die within a year of diagnosis. Other children do not become sick until they are five or six years old, and with increasing availability of aggressive treatment, may live for a number of years. An estimated 93% of children with HIV infection suffer developmental disabilities that result in some degree of mental or physical impairment.

More children are entering the service system at an early age due to federal special education legislation. The legislation did not increase the number of young children with special needs, but it has increased the number of children seeking early intervention services.

Department of Social (DSS) service caseloads are increasing and include more seriously disturbed children, more abused and neglected children and more seriously medically involved foster children who would not have survived 10 years ago. An estimated 75% of DSS clients have special needs, whether or not they have an IEP and are receiving special education services. There has been a steady increase in the

number of children born with congenital drug addiction over the last five years. Between 1983 and 1988, child abuse reports increased by 70% and substantiated reports increased by 50%. Increasing substance abuse by individuals who care for children is contributing to unprecedented growth in the rate of child abuse and neglect. It is projected that there will be at least 600 children a year in Boston and 1,350 - 5,400 children statewide born with physical, behavioral and/or cognitive problems as a result of maternal substance abuse.

National statistics indicate that at least 12% of children under the age of 18 are suffering from a diagnosable mental disorder. This figure may be as high as 20% for some children facing severe psychological adversity. Generally accepted national statistics indicate that a conservative estimate of the prevalence of clinical maladjustment in children is 11.8%, and prevalence of severe emotional disturbance is 5%.

The Department of Youth Services (DYS) is responsible for an average daily population of 1,900 youths committed for treatment and 250 youths detained pending court action. The number of youths detained and committed by the courts has increased dramatically in the past few years. Approximately 70% of youths coming in to DHS have been identified as children with special needs. This percentage has remained relatively stable for some time. One evident trend is that children entering the DHS system are much more disturbed and come from more restrictive placements than in the past.

The number of homeless families with children is increasing. Many of these children may have special needs due to shifting among local shelters and schools, missing school, malnutrition and the emotional trauma resulting from shelter life.

Children who have limited English speaking ability may be referred to special education because it is the only available source of extra academic assistance. Immigrant children who have been traumatized while living in strife-torn countries also may need special education services.

The need for planning to address these growing populations of children and youth with special needs in the face of current fiscal constraints is both clear and urgent.

